

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2006-9-W/S - ORDER NO. 2006-502
SEPTEMBER 11, 2006

IN RE: Amendments to 26 S.C. Code Ann. Regs.) ORDER
 103-500 (1976 and Supp. 2004) -Wastewater) PROMULGATING
 Utilities and 26 S.C. Code Ann. Regs. 103-) REGULATIONS
 700 (1976 and Supp. 2004) -Water Utilities)

This matter comes before the Public Service Commission of South Carolina (the Commission) for consideration of promulgation of proposed changes to the Commission's Article 5 and 7 regulations on wastewater and water utilities, respectively, which are officially cited as 26 S.C. Code Ann. Regs. 103-500, et. seq. (1976 and Supp. 2005) and 103-700, et seq. (1976 and Supp. 2005). A hearing was held pursuant to S.C. Code Ann. Section 1-23-111 (Supp. 2005).

In 2004, the General Assembly passed Act No. 175, which restructured the Commission. This Act modified the structure of the Commission and its functions and created the Office of Regulatory Staff (ORS). Several duties of the Commission were transferred to ORS on January 1, 2005. The purpose of the revisions to 26 S.C. Code Ann. Regs. 103-500, et. seq. (1976 and Supp. 2005) and 103-700, et. seq. (1976 and Supp. 2005) was to amend Articles 5 and 7 to conform to the new standards set by Act No. 175 of 2004.

In the February 2006 issue of the State Register, the new regulations proposed by this Commission, a Statement of Need and Reasonableness for these regulations and a

Preliminary Fiscal Impact Statement were published. The Commission also published a Notice of Public Hearing, which stated that the Commission had scheduled a hearing for April 27, 2006, at 10:30 a.m. to take place in the Commission's Hearing Room.

After subsequent due notice, a hearing was held on May 4, 2006, at 10:30 a.m. at the noticed place, with the Honorable Randy Mitchell, Chairman, presiding. All jurisdictional documents were submitted into the record as a Hearing Exhibit, which was admitted into evidence. Jocelyn Boyd, Deputy Clerk, outlined the proposed changes in the Commission's Wastewater and Water Regulations to conform to Act No. 175 of 2004. Other presenters proposed modifications to the proposed regulations. Several presenters lauded the spirit of cooperation that existed with regard to their development. Indeed, this Commission is grateful to everyone who contributed to the discussion of these regulations and believes that everyone should be complimented for their spirit of cooperation.

With regard to additional proposed changes by other presenters, the ORS Staff proposed changes to the records retention provisions, Regulations 103-511 and 103-711, to be consistent with National Association of Regulatory Utility Commissioners (NARUC) standards for records retention. We agree that these changes are more reasonable than the originally proposed regulations, since the proposals are consistent with NARUC standards.

In addition, after due consideration, we believe that the word "commission" should be added to Regulations 103-514(A) and (C), 103-714(A) and (C), and also 103-

571(C) and 103-771(C), since we believe that it is more reasonable for this Commission to be notified of service interruptions in addition to ORS.

Further, we hold that we should retain Regulation 103-535(O) as shown in our February 10, 2006, proposed regulations for the General Assembly as reasonable, since the statutory provision found in S.C. Code Ann. Section 27-33-50 (Supp. 2005) only prohibits a landlord from being liable for a tenant's nonpayment of sewer charges in buildings with three or fewer tenants. Accordingly, a regulation is reasonably needed to govern the relationship of the landlord with the company in this area with regard to buildings with more than three tenants.

In addition, we hold that the proposed changes to Regulations 103-512.3.3, 103-512.4.A.15, 103-517, 103-532.4, 103-535.1, 103-535(A), 103-712.3.3, 103-712.4.A.15, 103-732.5, 103-735.1, 103-735(A), 103-752(b), and 103-763 raised by discussion of the parties, and as shown in the draft of the Regulations presented to us at the hearing on May 4, 2006, should also be adopted as more reasonable than the originally proposed regulations.

Lastly, there was major oral argument at the hearing between ORS and a representative of various water and/or wastewater utilities before this Commission over proposed changes to Regulations 103-541 and 103-743. The argument continued through paper submissions after the hearing. The two original proposed Regulations appear as follows:

103-541:

No utility shall execute or enter into any agreement or contract with any person, firm, partnership, or corporation or an agency of the Federal, State, or local government which would impact, pertain to, or effect said utility's fitness, willingness, or ability to provide sewer service, including but not limited to the collection or treatment of said wastewater, without first submitting said contract in form to the Commission and the ORS and obtaining approval of the Commission.

103-743:

No utility shall execute or enter into any agreement or contract with any person, firm, partnership, or corporation or any agency of the Federal, State, or local government which would impact, pertain to, or effect said utility's fitness, willingness, or ability to provide water service, including but not limited to the treatment of said water, without first submitting said contract in form to the Commission and the ORS and obtaining approval of the Commission.

Although ORS originally proposed a major addition to these revisions which would have required a water/wastewater utility to notify the Commission and the ORS of any loan agreement payable for a period exceeding one year within one month of entering such agreement in which the assets of the utility were being pledged as collateral for the loan, ORS, subsequent to oral arguments at the Commission, revised its additional proposal in its letter of May 12, 2006, to the following:

(B) A water or wastewater utility shall notify the Commission and ORS of any loan agreement in which the utility's plant(s), facilities, or real property upon which such plant(s) or facilities are located are being pledged as collateral for such loan.

Pursuant to Order No. 2006-406, we allowed comment on this proposal by members of the public. One representative of the water and wastewater utilities filed comments, which were unfavorable to the revised proposal. In short and in part, the representative noted that the Commission and ORS already receive the indicated information in the revised proposal, and, also, that the specific contractual information and loan agreements can be gathered in the scope of a rate proceeding.

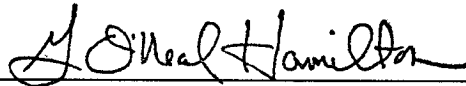
Although we understand and appreciate the ORS' proposed additional revisions to 103-541 and 103-743 contained in the letter of May 12, 2006, we must reject them at this time, and adopt the original proposed regulations. We agree with the utility representative that specific loan agreements should be examined in a rate proceeding. However, we will be open to further discussion on these issues during future review of these regulations.

The Commission has considered this matter and finds that the proposed changes to the Article 5 and 7 regulations, including those as discussed above, are reasonable and that a need also exists to conform these regulations to the provisions of Act No. 175. Based on the record as a whole, the Commission finds that the requisite need and reasonableness standards have been met and that the changes to the regulations as outlined above should be promulgated.

IT IS THEREFORE ORDERED THAT:

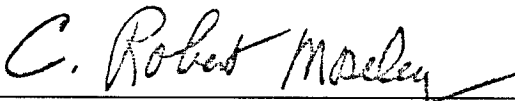
1. The changes to the Article 5 and 7 regulations as described above are hereby promulgated.
2. These regulations shall be submitted to the General Assembly for review pursuant to State law.
3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



G. O'Neal Hamilton, Chairman

ATTEST:



C. Robert Moseley, Vice Chairman

(SEAL)